

## **KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT TAKINGS ANALYSIS**

Pursuant to the Private Property Protection Act, K.S.A. 77-701 *et. seq.*, the Kansas Department of Health and Environment submits the following written report.

### **REGULATION(S):**

Revisions: 28-16-56c, 28-16-56d, 28-18-1, 28-18-2, 28-18-4, 28-18-8, 28-18-9, 28-18-11, 28-18-12, 28-18-13, 28-18-14, 28-18a-1, 28-18a-2, 28-18a-4, 28-18a-8, 28-18a-9, 28-18a-11, 28-18a-12, 28-18a-19, 28-18a-21, 28-18a-22, 28-18a-26.

Revoked: 28-18a-32.

New: 28-18-16, 28-18-17, 28-18a-33

### **1. Governmental Action Proposed:**

The Kansas Department of Health and Environment (KDHE) proposes to revise twenty-two regulations, revoke one and promulgate five new regulations pertaining to water pollution control and animals and related waste control with respect to confined feeding operations.

### **2. Risk to public health, safety or welfare created by the use of private property subject to the government action:**

The proposed regulations do not create a use of private property. The proper management of livestock waste is necessary to prevent the actual or potential a risk to public health, safety, and welfare.

### **3. Manner in which the proposed action will substantially advance the purpose of protecting public health, safety or welfare against the above described risk:**

The regulations provide the mechanisms for the permitting, location, construction and operation of certain confined animal feeding facilities.

### **4. Facts justifying the need for the restrictions imposed by the regulations:**

The restrictions imposed by the regulations are necessary to significantly reduce or eliminate the risks to public safety, health, or welfare resulting from the improper livestock waste management. Additionally, the United States Environmental Protection Agency (EPA) has promulgated regulations, which the State of Kansas must meet to be consistent with EPA and maintain program authorization.

### **5. Application of Attorney General's checklist as set forth in the Kansas Register, December 21, 1995.**

**A. Does the government action result in a permanent or temporary physical occupation or invasion of private property?**

No.

**B. Does the governmental action deny or abrogate a fundamental property right?**

No.

**C. Does the governmental action deprive the owner of all economically viable uses of the property?**

No.

**D. Does the governmental action substantially further a legitimate state interest?**

Yes. The protection of the soils and water of the State is a legitimate state interest.

**E. Are the proscribed uses or physical occupation part of a preexisting limitation on the landowner's title?**

Yes. Polluting the soils or waters of the state could be deemed a nuisance as well as violation of other state and federal laws.

- 6. Alternatives to the proposed governmental action that may fulfill the legal obligations of KDHE, reduce the extent of limitation of the use or private property or reduce the risk to the state that the action will be deemed a taking:**

The regulations promulgated fulfill EPA requirements, protect soils and waters of the State and sensitive groundwater areas with a minimal risk that the action will be deemed a taking.